

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 371 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHAH DALPAT BHUDARSHI

Versus

HEIRS OF DECEASED SAIYED BIN MAMAD

Appearance:

MR JITENDRA M PATEL for Petitioner

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 3/09/98

CAV JUDGEMENT

The petitioner herein is the landlord who owns a small shop premises in the nature of a cabin situated on a road known as Shakti Road at Dhragandhra, in Saurashtra. The premises were let out to one Saiyed Bin

Mamad (since deceased) on a monthly rent of Rs.5. Respondents nos.1-A and 1-B are the widows of this Saiyed Bin Mamad. The case of the petitioner is that the shop premises though rented to respondent no.1, were subsequently sub-let to respondent no.2 Anopchand Umedchand. The petitioner therefore filed Civil Suit No.201 of 1976 in the court of the Civil Judge (JD) at Dhragandhra seeking a decree of eviction against the respondents. The decree was sought on the ground of sub-letting as well as on the ground of arrears of rent.

2 The learned trial judge who heard the matter came to the conclusion that the ground of arrears of rent for more than six months as required under section 12(2) under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, (hereinafter referred to as the Bombay Rent Act) was not established. He however came to the conclusion that the ground of subletting available to the landlord under section 13(1)(e) of the Bombay Rent Act was established. He therefore by his judgement and decree dated 31.8.1981 decreed the suit for eviction on that ground.

3 Being aggrieved by that judgement and order, the respondents herein preferred an appeal being Regular Civil Appeal No.89 of 1981 which was heard by the learned District Judge, Surendranagar. The learned appellate Judge came to the conclusion that the ground of subletting was also not established and hence he allowed the appeal and set aside the decree passed in favour of the petitioner herein by his judgement and order dated 21.9.1982. Being aggrieved by that judgement and order this petition has been filed which came to be admitted on 15.4.1983.

4 When the matter reached for final hearing before me, nobody appeared for the respondents though the notice was served on them. Shri J.M. Patel, learned counsel, has appeared for the petitioner. Shri Patel has confined his submission only to the ground of subletting which was accepted by the learned trial judge as stated above.

5 Mr Patel has taken me through the evidence on record and the depositions of various witnesses. He has pressed into service principally two factors, namely, (i) letter dated 6.1.1976 supposed to have been written by respondent no.2 to the advocate of the petitioner which was taken on record as exh.27 and on the basis of the contents thereof the learned trial judge held that the said document shows acceptance of sub-tenancy; and (ii) board of the said shop which is known as Honest Pan

Centre on which name of Anopchand Umedchand is shown as owner thereof.

6 Mr Patel submitted that exh.27 is a letter written by respondent no.2 to the advocate of the petitioner and it shows the admission of sub-tenancy by him. He submitted that the learned trial judge has rightly read that letter against the respondents and stated that the appellate court has no reason to interfere with that finding. The letter is supposed to have been addressed to Shri Ramanbhai Maniar, advocate of the petitioner in the trial court. It states that respondent no.2 has received the letter sent on behalf of Dalpat Bhudarshi (petitioner herein). It further states that respondent no.2 had taken the premises on rent from Bai Ranbai (respondent no.1-A herein), widow of Saiyed Bin Mamad on the rent of Rs.25/- per month. He however disputes sub-tenancy. The said letter further states that the rent given by him is recorded in his note book and that in case the petitioner is the landlord, respondent no.2 will send the rent to him after seeking the permission of Bai Ranbai. When respondent no.2 was in witness box he has denied having written any such letter. Mr Patel draws my attention to the approach adopted by the trial judge before whom the said writing was held to be that of respondent no.2, on comparing his handwriting and signatures with other handwriting of his available in the Court. The learned appellate court did not approve of this approach. The learned appellate judge accepted the submission that even though section 73 of the Evidence Act authorises the Court to compare the disputed signature of writing, it would not be proper to base the conclusion on the mere comparison of the disputed and admitted writings without any other aid. The learned Judge also relied upon the judgement of a Division Bench of this Court rendered in the case of SIDDHARTH MOHANLAL SHARMA V. SOUTH GUJARAT UNIVERSITY reported in 1982 GLH 648 in this behalf. In this connection it is also material to note that respondent no.2 not only denied sending any such letter but, at the same time, denied his signatures on the other writings which were part of the Court record wherein he has signed. Mr Patel assailed this conduct of respondent no.2 stating that what respondent no.2 stated was absolutely false.

7 There is some force in the submission of Mr Patel with respect to the writings which were part of the record of the Court and there is some justification in his criticism of the conduct of respondent no.2 in denying his signatures even on the other documents which

were part of the record of the Court. However, what we are concerned with is not those writings or with the unreliability of respondent no.2. We are concerned with the particular letter dated 6.1.1976 and as to whether we can draw an inference that said letter was written by respondent no.2. As far as this letter is concerned, what is material to note is that it is addressed to one Ramanbhai Maniar who was the advocate of the petitioner. This Mr Maniar has not been examined in the trial court. Besides, it is only that letter which has been produced. No envelope is tendered on record wherein normally such a letter would be enclosed. In this behalf, it is also relevant to note that the learned trial judge compared the writing of respondent no.2 with his other signatures on the various writings which were part of the record of the Court such as written statement, vakalatnama etc. In this behalf, although there is no bar on the trial judge resorting to any such comparison, it has been stated by the Hon'ble Supreme Court that when such a disputed document is to be used against a party, it would be better that assistance of an expert is taken in this behalf. In the case of State (Delhi Administration) v. Pali Ram reported in AIR 1979 SC 14, the Hon'ble Supreme Court has observed as follows in para 29:-

"Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

Even with respect to the evidence of an expert, the Hon'ble Supreme Court has expressed much caution in the case of Murarilal v. State of M.P. reported in AIR 1980 SC 531 and has observed as follows in para 11 thereof:-

"There is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion evidence of a handwriting

expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight."

In the circumstances, in my view, it would be risky to rely upon that letter dated 6.1.1976 to come to the conclusion that the said letter shows acceptance of sub-tenancy on the part of the respondents.

8 The next submission of Mr Patel is that the evidence on record when considered leads to the very conclusion of subletting. He laid much emphasis on the fact that the shop was bearing a board of Honest Pan Centre and it showed the name of Anopchand as a proprietor thereof. Mr Patel also laid much emphasis on the defence of the respondents. The respondents had contended that respondent no.2 was an employee on a monthly salary of Rs.100. Mr Patel contended that it was difficult to believe that. Mr Patel submitted that it will have to be inferred that respondent no.2 was in exclusive possession of the shop and it amounted to subletting.

9 In this connection, when the evidence is looked into, it has come in the evidence of Bai Ranbai, widow of Saiyed Bin Mamad, that there is a cupboard inside the shop which is in the nature of a very small cabin. In her evidence she has stated that the said cupboard was purchased out of the earning of the shop business. She also stated that every day evening Anopchand used to bring whatever was the collection of the day to her. Mr Patel laid much emphasis on the fact that Anopchand has stated that he used to buy necessary articles for the shop in the name of Honest Pan Centre and also that occasionally he used to sell kites in the said shop. He submits that the said fact indicated that the shop was that of Anopchand, respondent no.2 herein. In this behalf what is material to note is that Bai Ranbai and Bai Mariyam are widows of Saiyed Bin Mamad out of which

Bai Ranbai used to look after the affairs of the shop. It has also come on record that at the time when she gave evidence she was almost blind. At the time when Anopchand gave evidence he was aged around 32 years or so. It has not been brought on record in his cross-examination as to for how many hours the shop was kept open and as to how many were his family members. This becomes necessary since the evidence was being given in the year 1976 when it was states that Anopchand was engaged on a monthly salary of Rs.100/-. Mr Patel stated that this story is totally false. In my view, what one has to consider is that these are the facts disclosed as existing way back in the year 1976 with respect to a very small pan shop situated in a very small town. Besides, it has also come in the evidence of Lal Mamad, brother-in-law of deceased Saiyed Din Mamad that the licence of the shop continued in the name of the deceased.

10 In my view, one has to see the totality of the factors. What is relevant to note is that at the end of day whatever were the earnings were brought to Bai Ranbai by Anopchand. The licence for the shop is not in the name of Anopchand. The cupboard in that very small shop or cabin belongs to Bai Ranbai. In these circumstances, if Anopchand has taken advantage of her near blindness and put up his board showing his name as owner or if he buys the articles in his name or occasionally sells kites and thread from the shop, it cannot lead one to the inference that the premises are in his exclusive possession so as to warrant an inference of subletting. In this behalf, the observations of the Hon'ble Ahmadi, J. as he then was in this court in the case of ABDULKADAR V. LALLA ABDULRASHID reported in 1981 GLR page 1264 are quite apt. What the learned judge has observed is, "One cannot expect a landlord to be a witness to the sub-tenant paying the rent to the tenant. But, it would be a matter of inference to be drawn from the facts and circumstances of each case." In the instant case, having taken the totality of the circumstances, it is clear that the business of the shop is the same as the deceased Saiyed Din Mamad was carrying on. The licence is not in the name of Anopchand, whom the widow is said to have engaged as a servant after the death of Din Mamad. Their cup board is placed in that very shop which is used for keeping various articles of the shop. Thus, the heirs of the principal tenant are retaining the possession of the premises and hence the appellate court was right in coming to the conclusion that the case was not made out under section 13(1)(e) of the Bombay Rent Act.

In the circumstances, there is no merit in the petition. The same is dismissed. Rule is discharged with no order as to costs.

(mohd)